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Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2016-0025; Notice 1]

BMW of North America, LLC, Receipt of Petition for Decision of
Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA),
Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: BMW of North America, LLC (BMW), has determined that certain model year (MY) 2016 BMW 7 Series passenger cars do not fully comply with paragraph S7.7.13.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices and associated equipment*. BMW filed a report dated January 21, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. BMW then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

DATES: The closing date for comments on the petition is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to: U.S.
Department of Transportation, Docket Operations, M-30,
West Building Ground Floor, Room W12-140, 1200 New
Jersey Avenue, SE, Washington, DC 20590.
- Hand Deliver: Deliver comments by hand to: U.S.
Department of Transportation, Docket Operations, M-30,
West Building Ground Floor, Room W12-140, 1200 New
Jersey Avenue, SE, Washington, DC 20590. The Docket
Section is open on weekdays from 10 am to 5 pm except
Federal Holidays.
- Electronically: Submit comments electronically by:
logging onto the Federal Docket Management System
(FDMS) website at <http://www.regulations.gov/>. Follow
the online instructions for submitting comments.
Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown at the heading of this notice.

DOT's complete Privacy Act Statement is available for review in the Federal Register published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BMW submitted a petition for an exemption from the notification and remedy requirements

of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BMW's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 5,076 MY 2016 BMW 7 Series passenger cars that were manufactured between August 03, 2015 and November 20, 2015.

III. Noncompliance: BMW states that the rear license plate lamp may not fully conform to paragraph S7.7.13.3 of FMVSS No. 108 because it exceeds the illumination ratio specified in that paragraph.

IV. Rule Text: Paragraph S7.7.13.3 of FMVSS No. 108 requires, in pertinent part:

S7.7.13.3 The ratio of the average of the two highest illumination values divided by the average of the two lowest illumination values must not exceed 20:1 for vehicles other than motorcycles and motor driven cycles.

V. Summary of BMW's Petition: BMW described the subject noncompliance and stated its belief that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

- The out-of-specification lamps satisfy all other requirements of FMVSS No. 108.

- The out-of-specification lamps only deviate from paragraph 7.7.13.3 of FMVSS No. 108 with regard to the lamp's illumination ratio and not the lamp's actual illumination.
- Personnel who participated in a company assessment reported no difference in their visual perception of the simulated license plates that were used as test specimens.
- BMW has not received any customer complaints related to the issue.
- BMW is not aware of any accidents or injuries related to this issue.
- NHTSA has previously granted petitions in which the illumination of test points remains well above the requirements.
- Vehicle production has been corrected.

In support of its petition, BMW submitted the following information pertaining to laboratory testing and analysis of the subject noncompliance:

- (1) FMVSS No. 108 Lamp Certification: BMW submitted a test report dated April 7, 2015 pertaining to lamps manufactured by U-SHIN Italia S.p.A. (U-SHIN) prior to vehicle production. According to BMW, this report indicates that

the lamp satisfies FMVSS No. 108 requirements, as the ratio of the average of the two highest illumination values divided by the average of the two lowest illumination values is 14.1, and FMVSS No. 108 requires that the value be less than 20.

- (2) Evaluation by Measurement Equipment: Both BMW and U-SHIN performed a number of tests of both in-specification and out-of-specification lamps to assess the performance of the subject lamps to the pertinent requirement of FMVSS No. 108. BMW submitted one representative test report for each test condition. The results are as follows:

- U-SHIN out-of-specification lamp tests: These showed an illumination ratio of 22.0. BMW noted, however, that each of the eight (8) test points satisfies the applicable FMVSS No. 108 photometric (illumination) requirements.
- BMW out-of-specification lamp tests: BMW performed its own out-of-specification tests to verify U-SHIN's test results and to obtain results for the lamps when equipped within a vehicle. These showed an illumination ratio of 22.2. BMW noted, however, that each of the eight (8) test points satisfies the applicable FMVSS No. 108 photometric (illumination) requirements.
- U-SHIN in-specification lamp tests: These showed an illumination ratio of 13.8. As with the previously

described tests, BMW noted, however, that each of the eight (8) test points satisfies the applicable FMVSS No. 108 photometric (illumination) requirements.

- BMW in-specification tests: BMW performed their own in-specification tests to verify U-SHIN's test results and to obtain results for the lamps when equipped within a vehicle. These showed an illumination ratio of 13.9. BMW again noted, however, that each of the eight (8) test points satisfies the applicable FMVSS No. 108 applicable photometric (illumination) requirements.

- (3) Evaluation by human assessment: In addition to the laboratory testing performed by both BMW and U-SHIN using specific lamp measurement equipment, BMW also compared the out-of-specification lamps to the in-specification lamps via human assessment. BMW performed this assessment to determine whether or not the condition caused by the non-compliance was perceptible to other road users (i.e., drivers approaching an affected vehicle) and, if so, its effect on safety.

BMW submitted photographs that depict the illumination of a test specimen simulating a rear license plate by both in-specification and out-of-specification lamps. According to BMW, while there may be a slightly perceptible difference in the photographs depicting the test specimen

illuminated by in-specification and out-of-specification lamps, this is due to tolerances of the camera equipment related to exposure time and shutter speed. BMW stated that the personnel who participated in this assessment reported no difference in their visual perception of the test specimens.

Additionally, BMW noted that even for the out-of-specification lamp, all of the eight (8) test points satisfy the applicable FMVSS No. 108 photometric (illumination) requirements. BMW emphasized that the noncompliance pertains to the illumination ratio, not to the actual lamp illumination. As a consequence, BMW asserts that while the noncompliance condition can be measured in a laboratory, it cannot be detected by the human eye, and therefore drivers of approaching vehicles will be afforded the same level of visibility as if approaching a non-affected vehicle. According to BMW, these analyses support the conclusion that the condition caused by the noncompliance does not affect the safety of affected vehicle occupants or other road users such as drivers approaching affected vehicles.

- (4) Field Experience: BMW states that its Customer Relations division has not received any contacts from vehicle owners regarding the matter at issue. As a consequence, BMW

believes that, consistent with the results of the laboratory tests and human assessments described above, the condition is undetectable to road users such as drivers approaching affected vehicles. BMW further notes that it is not aware of any accidents or injuries that have occurred as a result of the condition.

- (5) Prior NHTSA Rulings: BMW states that NHTSA has previously granted petitions from other manufacturers involving various issues pertaining to FMVSS No. 108 noncompliance. BMW believes that in some of those petitions, the photometry (illumination) of the test points remains well above the FMVSS No. 108 requirements as the noncompliance has no affect upon the illumination of the test points.
- (6) Vehicle Production: BMW stated that subsequent vehicle production has been corrected to conform to paragraph 7.7.13.3 of FMVSS No. 108.

In summation, BMW expressed the belief that the subject noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt BMW from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and remedying the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file

petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that BMW no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe, Director
Office of Vehicle Safety Compliance

Billing Code: 4910-59-P

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